



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MATCHPOINT ASSOCIATES, L.C.
FOR
MATCHPOINT APARTMENTS
Unpermitted Discharge**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Matchpoint Associates, L.C., regarding the Matchpoint Apartments, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facility" or "Site" means the Matchpoint Apartments located at 5846-B Westtower Drive, Richmond, Virginia, which includes a sanitary sewer collection system for the apartment residents, that discharges to the City of Richmond's sewer collection system.
10. "Matchpoint" means Matchpoint Associates, L.C., a limited liability company authorized to do business in Virginia and its members, affiliates, partners and subsidiaries. Matchpoint is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "O&M" means operations and maintenance.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
15. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful

or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

16. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "TMDL" means total maximum daily load.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Matchpoint Associates, L.C. (Matchpoint) owns, and contracts Landmark Property Services, Inc. to operate and maintain a sanitary sewer collection system for the Site that discharges to the City of Richmond's Department of Public Utilities (RDPU) Sewer Collection System.
2. Unnamed tributary of Powhite Creek Middle James River Basin. During the 2012 305(b)/303(d) Integrated Water Quality Assessment, the receiving stream was not assessed for any designated use. The tributary enters Powhite Creek, which was considered a Category 5D water on the 2012 Assessment. The stream is impaired of the Recreation Use due to *E. coli* exceedances and of the Aquatic Life Use due to an altered

benthic community. The Fish Consumption- and Wildlife Uses were fully supporting. The Site was not addressed in the James River and Tributaries – City of Richmond Bacterial TMDL and was also not included in the Chesapeake Bay TMDL. The unnamed tributary is considered a Tier 1 water.

3. On February 6, 2014, the Department received notification from the RDPU of an overflowing sewage manhole owned by Matchpoint and located at the Site. Department staff inspected the Site and observed an untreated sewage discharge from a manhole on the property to an unnamed tributary of Powhite Creek. Matchpoint staff only reported the discharge to the RDPU.
4. On February 6, 2014, Matchpoint staff called a sewer service contractor to make repairs to stop the discharge, remove soils/debris, and lime the affected area. The contractor completed the repairs on February 6, 2014.
5. On February 25, 2014, the Department issued NOV No. 2014-02-PRO-202 to Matchpoint for the unauthorized discharge and the failure to report the discharge.
6. On March 18, 2014, the Department met with Matchpoint to discuss the NOV.
7. Va. Code § 62.1-44.5.A states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
8. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
9. The Regulation, at 9 VAC 25-260-20A states that State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.
10. The Department has issued no permits or certificates to Matchpoint.
11. The unnamed tributary of Powhite Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
12. Based on the results of the February 6, 2014, Site visit, and the March 18, 2014, meeting the Board concludes that Matchpoint has violated Va. Code 62.1-44.5.A & B, 9 VAC 25-31-50.A & B, and 9 VAC 25-260-20 by discharging untreated sewage and municipal wastes from the Site without a certificate from the Board as described above.

13. Matchpoint has submitted documentation that verifies that the violations as described above have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Matchpoint, and Matchpoint agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$8,125 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Matchpoint shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Matchpoint shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Matchpoint for good cause shown by Matchpoint, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Matchpoint admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Matchpoint consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Matchpoint declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Matchpoint to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Matchpoint shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Matchpoint shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Matchpoint shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert

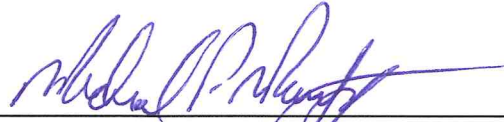
will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Matchpoint.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Matchpoint has completed all of the requirements of the Order;
 - b. Matchpoint petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Matchpoint.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Matchpoint from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Matchpoint and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Matchpoint certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Matchpoint to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Matchpoint.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Matchpoint voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5th day of DECEMBER, 2014.



Michael P. Murphy, Regional Director
Department of Environmental Quality

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Matchpoint Associates, L.C. voluntarily agrees to the issuance of this Order.

Date: 10/1/14 By: B.B. White MANAGING MEMBER
(Person) (Title)
Matchpoint Associates, L.C.

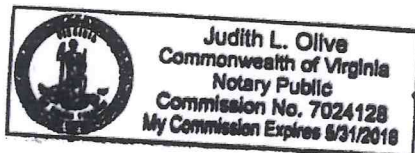
Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 1st day of

October, 2014, by B.B. White who is

MANAGING MEMBER of Matchpoint Associates, L.C., on behalf of the limited liability company.



JUDITH L OLIVE

Notary Public

7024128

Registration No.

My commission expires: 5/31/18

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

1. Unpermitted Discharge

Within 60 days of the issuance of this Order, Matchpoint shall submit to the Department for review and approval, a standard operating procedure (SOP) for the reporting of unauthorized discharges of sewage at the Site and the corrective action necessary to eliminate and clean-up said discharges. Once approved by the Department, the SOP shall be immediately implemented by Matchpoint at the Site.

2. DEQ Contact

Unless otherwise specified in this Order, Matchpoint shall submit all requirements of Appendix A of this Order to:

Frank Lupini
Enforcement Specialist
VA DEQ –Piedmont Regional Office
4949A Cox Road,
Glen Allen, Virginia 23060
Frank.Lupini@deq.virginia.gov